

ARGUMENTS/REMARKS

Applicants would like to thank the Examiner for the careful consideration given the present application. The application has been carefully reviewed in light of the Office action, and amended as necessary to more clearly and particularly describe and claim the subject matter which applicants regard as the invention.

Claims 1-12 remain in this application. New claim 13 has all of the elements of either claim 5, or claim 10, in independent format, and thus is allowable because the Examiner stated that claim 5 and claim 10 would be allowable if put into independent format.

Claims 3-4 and 6-9 were rejected under 35 U.S.C. §112, first paragraph, for not complying with the written description requirement. Although applicant traverses this rejection, the issue is moot in light of amendments to claim 3.

Because claim 3 has not been rejected under any prior art, claim 3 is in a condition for allowance.

Claims 1 and 2 were rejected under 35 U.S.C. §102(e) as being anticipated by Ishige *et al.* (U.S. 6,094,489). For the following reasons, the rejection is respectfully traversed.

Claim 1, as amended, recites a method using both weighted "loudness perception parameters of the individual" and weighted "normal loudness perception parameters" using the step of "combining the weighted loudness perception parameters of the individual with the weighted normal loudness perception parameters to define a weighted loudness parameter". The individual loudness perception parameter is weighted using a "positive first factor" and the normal loudness perception parameter is weighted using a "positive second factor."

Ishige does not suggest any such combining. Instead, the Examiner argues that the term "parameter" used in the claims is a term of broad reasonable interpretation. But the claim does not merely recite "parameter", it recites "loudness perception parameters", specifically, a "loudness perception parameters of the individual" and

"normal loudness perception parameters". It is not reasonable, nor proper, for the Examiner to ignore the modifying language in interpreting the term "parameter".

The Examiner argues that "the thresholds cited by the applicant correspond to a sound pressure level of normal hearing and a sound pressure level of impaired hearing, both at a loudness", arguing that the "association of a loudness and a sound pressure level for each point at least read on 'parameters' relevant to normal and impaired loudness perception" and that "the gain produced, G , at least reads on a weighted loudness 'parameter'".

The Examiner's comparison of the reference and the claim language is improper. One skilled in the art would know that sound pressure levels, and perceived loudness, are different parameters. In fact, the Ishige reference makes that clear at col. 1, lines 40-44, where it states that "sound pressure is a physical quantity of a sound and the loudness is a sound amount sensed when a human being hears a sound at a certain sound pressure...." Accordingly, the reference makes clear that sound pressure and loudness perception are different.

Continuing, the Examiner cites the equation " $G=b-a$ " of the reference, stating that "a and b are sound pressure levels on the loudness curves of the normal person and user points", thus admitting that the gain of the reference is based on sound pressure levels, not loudness parameters. Furthermore, the Examiner points to Figure 6 in support of the "loudness" aspect of the claim language. However, if one looks at the curve of Fig. 6, one notes that at sound pressure levels a and b, the loudness perception of the normal curve and the hearing impaired curve are identical!

Thus, it is clear that sound pressure parameters are different than loudness parameters, because the sound pressure levels a and b are clearly different, but correspond to identical loudness parameters on the different curves. Accordingly, the claim language is not taught by the cited equation of the reference, because the reference bases its gain on sound pressure levels, whereas the claim recites settings depending on the weighted loudness parameters. Thus, claim 1 is patentable over the reference.

Furthermore, claim 1 has been amended to recite that both the first and second factors be "positive". As argued by the Examiner, the equation " $G=b-a$ " can be written as

" $G=(1)b + (-1)a$ ", which involves a positive and a negative factor, and thus does not teach the amended claim language.

Accordingly, for either of the above reasons, claim 1 is patentable over the reference.

The remaining claims depend, directly or indirectly, on one of claims 1 and 3, and thus are allowable for the same reasons as the parent claim.

In consideration of the foregoing analysis, it is respectfully submitted that the present application is in a condition for allowance and notice to that effect is hereby requested. If it is determined that the application is not in a condition for allowance, the Examiner is invited to initiate a telephone interview with the undersigned attorney to expedite prosecution of the present application.

If there are any additional fees resulting from this communication, please charge same to our Deposit Account No. 16-0820, our Order No. 33495.

Respectfully submitted,

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